IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	
Terry Vovan	
Serial No.: 10/645,893	Group Art Unit: 1761
Filed: August 18, 2003	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	

BRIEF FOR APPELLANT
UNDER MPEP 1206

Hon. Commissioner of Patents — March 4, 2009

Alexandria, VA 22313-1450 — Los Angeles, CA 90024

This is an appeal from the Examiner of Group Art Unit 1761 rejecting all remaining claims in the case.

(i) REAL PARTY IN INTEREST

The real party in interest is the assignee, PWP Industries, a California corporation with an address at 5500 South Boyle Avenue, Vernon, CA 90058.

(ii) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(iii) STATUS OF CLAIMS

Pending:	Claims 5, 6, 7, 18, and 19	All claims 5, 6, 7, 18, and 19 were rejected.
Canceled:	Claims 1-4, and 8-17.	Claims 1-4, and 8-17 were rejected and withdrawn.

Appealed: Claims 5, 6, 7, 18, and 19 Applicant does not appeal the rejection of claims 1-4, and 8-17.

(iv) STATUS OF AMENDMENTS

No amendment was filed after the final office action.

(v) SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 5 describes a food container of thin (on the order of 0.02 inch thick) resilient sheet plastic, that includes a base 14 (Fig. 1) and cover (16). The base has a peripheral wall (24) with outwardly projecting (with respect to axis 18) dimples (26). The cover has a peripheral wall (30) which is deformed into dimple-receiving regions (32). Each dimple-receiving region has a chimney (52, Fig. 2) about as wide as a dimple 26 to receive a dimple (at 26A, Fig. 2) as the cover is lowered on the base. When the cover is turned, the dimple is received (at 26B) in a dimple-receiving cavity (54) of the cover.

The base and cover can deflect radially to assure that the dimple (e.g. at 26B in Fig. 5) can be received in the dimple-receiving cavity (54, Fig. 5). Also, the cover is transparent so a person can see the dimple (at 26B, Fig. 2) move into the dimple-receiving region.

Claim 6 which depends from claim 5, describes a transition location (62, Fig. 2) between the chimney upper portion (60) and the dimple-holding cavity (54). The transition location (62, Fig. 6) forms a resilient narrowing through which the dimple (26B) must pass to reach the chimney (52), to resist turning the cover to remove it.

Claim 18 is similar to claim 6 in describing a transition location (62, Fig. 6) that a dimple must pass through (from 26B to 26A, Fig. 2) to go from a dimple-receiving cavity (54) to a chimney (52) in order to remove the cover member from the base. The base and cover members are of deflectable plastic sheets to enable radial deflection at the constriction (62, Fig. 6) of the transition location.

The specification describes the base and cover each formed of a heat-deformed sheet of plastic having a thickness on the order of 0.02 inch (page 5, lines

23-24) with the cover being transparent (page 2, line 4). The specification describes that the dimple and/or transition location must deflect in order for the dimple to pass across the transition location (page 7, lines 18-23).

(vi) Ground of Rejection To Be Reviewed On Appeal

Claims 5-7 and 18-19 were each rejected as obvious over 11 (eleven) references, so the ground to be reviewed is whether the claims are obvious over the references.

1. The Prior Art

Kalmanides	US 5,613,607
Draenert	US 4,671,263
Elwell	US 1,515,560
Reid	US 5,975,322
Foster	US 5,810,209
Silk	US 7,198,169
Schwartz	US 4,305,180
Gasbarra, et al.	US 3,371,817
Podel	US 1,582,429
Schwartz, et al.	US 4,279,355
Amico	US 4,158,983

(vii) Argument

Discussion of Each Claim And The Ground of Rejection

Claim 5

Claim 5 describes regions of the cover (16, Fig. 2) each having chimney (52, Fig. 2) about as wide as a cover dimple (26). Thus, as the cover is lowered the dimple (at 26A, Fig. 2) is received in a chimney upper portion (60). Regions

of the cover each has a dimple-receiving cavity (54, Fig. 2) that receives a dimple when the cover is turned. The base and cover are each formed of a resilient deformed plastic sheet of a thickness on the order of 0.02 inch so local regions of the sheet can deform. The dimples (26) and dimple-receiving regions (32, 54) can deflect radially (I, O in Fig. 6) to assure that a dimple is received despite manufacturing tolerances.

Claim 5 was rejected as obvious over Kalmanides in view of the other of the eleven references. Kalmanides shows, in his Fig. 2, a plastic sheet base member 21 with a locking ledge 40 formed by inwardly deforming the cylindrical surface of his base. He also shows a plastic sheet cover 22 that is deformed to form a flange 30. His Fig. 9 shows that when his cover is turned, the cover flange 30 moves under his locking ledge 40 until it hits a stop 41 that prevents further cover turning in the locking direction. His Fig. 9 also shows that as the leading edge 32 of his flange approaches the stop 41, the trailing edge 33 of his flange passes his locking tab 42, to thereby prevent his cover from turning in the unlocking direction. This is described in his col. 8, lines 24-32. Although his base and cover are formed of plastic sheets, he does not use the resilience of his plastic sheets to urge a dimple radially (toward or away from the axis of his container) against the walls of a dimple-receiving cavity.

Draenert shows a medical device for mixing cement that repairs broken bones. His Fig. 1 shows a channel (14), but his channel appears cut in the walls of his tube rather than being constructed by outward deformation of a transparent and resilient plastic sheet, and his channel opening cannot press radially against his pins (16).

Elwell shows a container with a closure member C (his Fig. 1) having a vertical chimney 30 that leads to an inclined passage. His body, or base, 11 has a lug 15 that moves into the chimney and then along his inclined passage. His lug movement along his inclined passage compresses a packing ring 25 (Fig. 2). He appears to rely on the resilience of his packing ring to hold his closure closed, rather than on radial resilience of his container or closure member.

Reid shows a bottle stopper 25 (his Fig. 9) with bosses 43 that thread onto bayonet threads 23 on his bottle. His bosses do not move into a boss-receiving cavity after passing through a chimney that closely receives his bosses. The Examiner cites Reid as teaching that a cap and bottle each can be made of plastic (but not sheet plastic) and for creating a snap sound, but Reid does not show two sheet plastic parts whose walls can deflect radially to closely receive a dimple formed in another plastic sheet.

Foster shows a manually operated sprayer with a cap (56, Fig. 1) that threads onto a bottle 122 using bayonet threads. Neither part is of a deformed plastic sheet, and he does not rotate a dimple into a cavity or rely on radial deformation of a thin (0.02 inch thick) plastic sheet.

Silk shows a container 12 (Fig. 1) and lid 14, wherein the lid can be permanently closed so the device can be used as a toy hockey puck. It appears that only his container 12 can be compressed. His parts are not sheet plastic and he does not move a dimple along a chimney and then rotate the dimple into a cavity and rely on resilience of both parts.

Schwartz (4,305,180) shows a narrowing (34, Fig. 2) cut in a coupling nut of steel or hard plastic, but not in a resilient plastic sheet.

Gasbarra shows a protrusion (34, Fig. 5) on a base that snaps into a recess (72, Fig. 5). However, he shows vertical snapping and deflection rather than radial deflection by a base and lid each of a thin plastic sheet.

Podel shows a screw cap that screws onto a glass battle (his page 2, line 3). He shows outward projecting members (10, 11, Fig. 1) on his flared cap that can deflect upward.

Schwartz (4,279,355) shows outward-projecting tabs 24 (Fig. 1) of his container 22 that fit into upward grooves and horizontal grooves 40 of his cap. His container and cap are not formed of thin sheet plastic but is molded (his Col. 3, lines 25-29).

Amico describes an anchor bolt assembly for mines. His base bottom 32

(his Fig 4) has an indentation 38 with a chimney 31 and inclined passage for receiving a protrusion 44 (Fig. 5) on an end cap. His parts are not both made of resilient thin plastic sheets.

Thus, none of the references show a container base and lid both made of thin (0.02 inch thick) plastic sheeting, one forming a dimple and the other forming a chimney lending to a cavity that closely receives the dimple. None of the references show thin plastic sheets of the base and lid that provide resilience so the dimple can move into the cavity despite manufacturing tolerances. Accordingly, applicant believes that claim 5 should be allowed.

Claim 6

Claim 6, which depends from claim 5, describes a transition location (62, Fig. 2) between the top (60) of the chimney and the dimple-holding cavity (54). When removing the covering from the base, the transition location (62, Fig. 6) forms a resilient narrowing through which the dimple (26B) must pass to reach the chimney (52) to move down the chimney. The resilience of the thin plastic sheets that form the base 14 and covering 16 allow deflection to pass the dimple across the transition 62, if the covering is forcefully turned. None of the references show such a narrowing which a dimple must pass across, or show this in a base and cover both made of thin plastic sheets.

Claim 7

Claim 7, which depends from claim 6, describes the narrowing resulting from the transition location (62, Fig. 6) being in a radial direction (toward or away from the container axis). The resilience of the thin plastic sheets that form the base 14 and covering 16 allow radial deflection so the dimple 26 can pass across the transition 62 if the covering is forcefully turned. None of the references show such narrowing in a radial direction, which allows a thin sheet plastic base and covering to deflect radially to pass a dimple across a radial narrowing.

Claim 18

Claim 18 is similar to claim 7 in describing plastic sheets forming base and cover members, so the members can deflect radially to enable a dimple (26B, Fig. 6) to move through a constriction (62) to a position (26A) at the top of a chimney. Thus, none of the references show the feature of claim 7 and 18.

Claim 19

Claim 19, which depends from claim 18, describes the radial depth (E, Fig. 6) of the transition location being less than the radial depth (G) of the dimple-receiving cavity. None of the references show or describe this.

The Examiner says that Reid, Silk, Foster, and Amico show radial narrowing. Reid shows an elastomeric stopper 13 (his Fig. 6) with a boss 43 that passes around a locking bar 53. However, his stopper 13 with boss 43 are of thick elastomeric material rather than thin plastic. His bottle 10 (Fig. 2) is of glass or thick plastic (see Fig. 9A) rather than a thin plastic sheet.

The Examiner cites Silk Fig. 9 as showing a radial narrowing. His Fig. 9 shows part of a ball shown in his Fig. 7, which has two ball parts 62 (receptacle) and 64 (lid). His lid has a downward-extending skirt 86 that holds a flange 90. Although his skirt 86 can deflect, this is different from a thin plastic sheets that can locally deflect

The Examiner cites Foster for teaching a radial narrowing in his Fig. 7 (the Examiner cites items 124, 138 and col. 6, l. 34-48). Foster does not show resilient thin plastic sheets, or a narrowing between two recesses (our chimney top 60 in our Fig. 6 and our dimple receiver 54).

The Examiner says that Amico teaches a radial narrowing. Applicant does not see this in Amico. In any case, Amico concerns a metal anchor for mine roofs rather than thin plastic sheets for a food container, and therefore concerns unrelated art.

The Examiner points out that Kalmanides shows a container of two plastic sheets. However, Kalmanides obtains locking by the trailing edge 33 (his Fig. 9) of his flange passing the leading edge 32 of his locking tab and then lying behind it. His trailing edge 33 is pushed down to release it from the locking tab, rather than deflecting radially.

The Examiner cited all above 11 references but did not mention the specific relevance of those other than Gasbarra, Podel, Schwartz, Amico and Kalmanides.

In view of the above applicant requests that the Examiner's rejection of claims 5-7 and 18-19 be reversed. No oral hearing is requested.

Respectfully submitted,

10960 Wilshire Boulevard
Suite 1220
Los Angeles, CA 90024
(310) 477-0578

Leon D. Rosen
Attorney for Applicant
Registration No. 21,077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	:	
Terry Vovan	:	
Serial No.: 10/645,893	:	Group Art Unit: 1761
Filed: August 18, 2003	:	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	:	

APPENDIX TO APPEAL BRIEF
CLAIMS 5-7 and 18-19

Hon. Commissioner of Patents — March 4, 2009

Alexandria, VA 22313-1450 — Los Angeles, CA 90024

5. A cake container for holding cake or other food which includes a base (14) lying on a vertical container axis (18), said base having a cake-supporting base surface (20) and having a largely cylindrical base peripheral wall (24) centered on said container axis and extending around said cake-supporting base surface, said cake container also including a cover (16) that has a greater height than said base and that has a largely cylindrical cover peripheral wall (30) centered on said container axis, wherein:

said base peripheral wall has a plurality of radially outwardly-projecting dimples (26);

said cover peripheral wall has a plurality of dimple-receiving regions (32) each formed by a radially-outward deformed region of said cover peripheral wall; said dimple-receiving regions each having a chimney (52) about as wide as one of said dimples to receive a dimple in a chimney upper portion (60) by the cover being lowered around the base while chimney lower ends initially lie directly over

said dimples;

said dimple-receiving regions each having a dimple-receiving cavity (54) connected to one of said chimney upper portions to receive one of said dimples when the cover is turned about said cover axis after the dimple has reached said chimney upper portion;

said base and said cover are each formed of a resilient plastic sheet of a thickness on the order of 0.020 inch that has been deformed, and walls of said dimple-receiving regions and said dimples each can deflect radially to assure that the dimples can be received in the dimple-receiving regions despite tolerances in manufacture, and said cover is formed of a transparent plastic sheet, whereby to allow a person to view a dimple as it moves in a dimple-receiving region.

6. The cake container described in claim 5, wherein:

said dimple-receiving cavities each have a transition location (62) between its chimney upper portion (60) and a dimple-holding cavity (54), said transition location forming a resilient narrowing through which the corresponding dimple must pass and that provides resistance to dimple movement between the dimple holding cavity and the chimney upper portion.

7. The cake container described in claim 6 wherein:

said narrowing is in a radial direction (0,I) of the transition location with the radial direction being a direction radial to said vertical container axis.

18. A cake container for holding a cake or other food, which includes a base member (14) of a formed first plastic sheet on which the food lies and a transparent cover member (16) of a formed second plastic sheet that is transparent to allow a buyer to see the food, said base and cover member being centered on a vertical axis (18), wherein:

a first of said members (14, 16) forms a plurality of dimples (26) in its plastic sheet, each dimple having inner and outer surfaces with one surface forming a

projection and the other surface forming a recess;

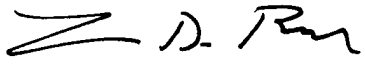
a second of said members forms a plurality of vertically extending hollow chimneys (52) that each receives the projection of one of said dimples, said second member also forms dimple-receiving cavities (54) each with a wall (42) that prevents a dimple from moving in a vertical direction that would disconnect the members, each dimple constructed to pass from one of said chimneys into one of said dimple-receiving cavities when said cover is turned about said axis, the plastic sheets of said members being deflectable to enable close reception of each dimple in a dimple-receiving cavity by radial deflection (I, 0) of the members;

said second member forms a transition location (62) between each chimney and each corresponding dimple-receiving cavity, each transition location has a constriction to resist turning of said cover on said base to move one of said dimples through the constriction into one said chimneys.

19. The cake container described in claim 18, wherein:

each of said dimple-receiving cavities has a maximum radial depth (G), and each of said transition locations has a smaller radial depth (E) than the maximum radial depth of a dimple-receiving cavity.

Respectfully submitted,



10960 Wilshire Boulevard
Suite 1220
Los Angeles, CA 90024
(310) 477-0578

Leon D. Rosen
Attorney for Applicant
Registration No. 21,077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	:	
Terry Vovan	:	
Serial No.: 10/645,893	:	Group Art Unit: 1761
Filed: August 18, 2003	:	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	:	

RELATED APPEALS APPENDIX

Hon. Commissioner of Patents
Alexandria, VA 22313-1450

March 4, 2009
Los Angeles, CA 90024

There are no related appeals.

Respectfully submitted,

10960 Wilshire Boulevard
Suite 1220
Los Angeles, CA 90024
(310) 477-0578

Leon D. Rosen
Attorney for Applicant
Registration No. 21,077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	:	
Terry Vovan	:	
Serial No.: 10/645,893	:	Group Art Unit: 1761
Filed: August 18, 2003	:	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	:	

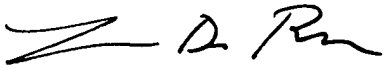
RELATED EVIDENCE APPENDIX

Hon. Commissioner of Patents
Alexandria, VA 22313-1450

March 4, 2009
Los Angeles, CA 90024

No evidence is presented and no evidence is cited.

Respectfully submitted,



10960 Wilshire Boulevard
Suite 1220
Los Angeles, CA 90024
(310) 477-0578

Leon D. Rosen
Attorney for Applicant
Registration No. 21,077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of:	:	
Terry Vovan	:	
Serial No.: 10/645,893	:	Group Art Unit: 1761
Filed: August 18, 2003	:	Examiner: Viren A. Thakur
For: CAKE CONTAINER COVER-BASE CONNECTION	:	

RELATED CITATION APPENDIX

Hon. Commissioner of Patents
Alexandria, VA 22313-1450

March 4, 2009
Los Angeles, CA 90024

No citation is made in this Appeal Brief.

Respectfully submitted,

10960 Wilshire Boulevard
Suite 1220
Los Angeles, CA 90024
(310) 477-0578

Leon D. Rosen
Attorney for Applicant
Registration No. 21,077